

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STATE OF MISSOURI, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR.,
in his official capacity as the President of
the United States of America, *et al.*,

Defendants.

No. 4:21-cv-01329

**PLAINTIFF STATES' MOTION FOR EXPEDITED
BRIEFING AND CONSIDERATION OF THEIR MOTION TO
LIFT THE STAY OF THE DISTRICT COURT PROCEEDINGS**

Pursuant to E.D. Mo. R. 4.01, Plaintiffs, the States of Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire, respectfully request that the Court order expedited briefing and consideration of their Motion to Lift the Stay of the District Court Proceedings. *See* Doc. 43. Because Defendants' deadlines for compliance with the challenged CMS vaccine mandate have begun to run, the Plaintiff States seek to resume the proceedings before this Court and move the case to final judgment as quickly as possible. To accomplish that, the States ask the Court to expedite the briefing and consideration of their Motion to Lift the Stay of the District Court Proceedings.

Upon issuing their vaccine mandate on November 5, 2021, Defendants originally ordered all covered healthcare providers to ensure that their employees submit to at least one vaccine dose by December 6, 2021, and that employees be fully vaccinated by January 4, 2022. 86 Fed. Reg. 61,555, 61,571 (Nov. 5, 2021). Before those deadlines arrived, this Court issued a preliminary injunction enjoining the mandate on November 29, 2021. *See* Doc. 28. After the Supreme Court

granted a stay of this Court's injunction on January 13, 2022, and allowed the mandate to take effect, *see Biden v. Missouri*, 142 S. Ct. 647 (2022) (per curiam), CMS ordered that covered workers in the Plaintiff States must receive the first vaccine dose by February 14, 2022, and achieve full vaccination by March 15, 2022. *See CMS, Guidance for the Interim Final Rule – Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination* (Jan. 14, 2022), <https://www.cms.gov/files/document/qso-22-09-all-injunction-lifted.pdf>. Yet CMS told covered facilities in the Plaintiff States that they would not face enforcement actions until the middle of April 2022 so long as they maintain a certain percentage of compliance beginning February 14, 2022, and they have a plan to achieve full compliance by the middle of April 2022. *Id.*

Under this staggered enforcement schedule, the Plaintiff States are beginning to feel the adverse impact of the CMS vaccine mandate. Worse yet, they anticipate new levels of devastation with each passing deadline—with the most catastrophic blow coming in the middle of April, once full compliance is required and enforcement actions commence. As a result, the States seek to restart and expedite the proceedings before this Court, and that begins by obtaining a prompt resolution of their Motion to Lift the Stay of the District Court Proceedings.

To that end, the Plaintiff States request a ruling on their Motion to Lift the Stay of the District Court Proceedings by Thursday March 3. Consistent with that goal, the States propose the following expedited briefing schedule for that Motion: Defendants' response should be due by Monday February 28; and Plaintiffs' reply should be due by Tuesday March 1. And to move as expeditiously as possible, the Plaintiff States are willing to submit that Motion without oral argument, or if the Court prefers to hear argument, the States ask that it be scheduled for Wednesday March 2.

The Court has the authority to grant this request to expedite as part of its “inherent” power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Allowing multiple weeks to pass before ruling on the Motion to Lift the Stay of the District Court Proceedings would prejudice the States in their attempt to obtain relief before the CMS vaccine mandate inflicts further harm on the healthcare systems in their States. The Court should thus expedite the briefing and consideration of that Motion.

Defendants cannot credibly claim prejudice from being ordered to file a response by Monday February 28. Earlier this month, Defendants already filed a 20-plus-page brief opposing an attempt by a different coalition of States to pursue further proceedings in their challenge to the CMS vaccine mandate. *See* Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Leave to File Second Amended, Supplemental, and Restated Complaint, *Louisiana v. Becerra*, No. 3:21-cv-03970 (Feb. 7, 2022) (Doc. 55). Much of what Defendants might say in opposition to the Plaintiff States’ Motion to Lift the Stay of the District Court Proceedings here has already been written there.

For all these reasons, Plaintiff States respectfully request that the Court establish the following schedule for resolving the pending Motion to Lift the Stay of the District Court Proceedings:

- Defendants’ response shall be filed by Monday February 28, 2022;
- Plaintiffs’ reply shall be filed by Tuesday March 1, 2022; and
- Oral argument, if the Court deems it necessary, shall be on Wednesday March 2, 2022.

Dated: February 23, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 23, 2022, a true and correct copy of the foregoing and any attachments were filed electronically through the Court's CM/ECF system, to be served on counsel for all parties by operation of the Court's electronic filing system and to be served on those parties that have not appeared who will be served in accordance with the Federal Rules of Civil Procedure by mail or other means agreed to by the party.

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